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COMMITTEE AGAINST TORTURE

Eighteenth session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 284th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 29 April 1997, at 3.35 p.m.

Chairman: Mr. DIPANDA MOUELLE

CONTENTS

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (continued)

Third periodic report of Ukraine (continued)

* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.284.

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The public part of the meeting was called to order at 3.35 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Third periodic report of Ukraine (CAT/C/34/Add.1) (continued)

1. At the invitation of the Chairman, Mrs. Pavlikovska (Ukraine) took a place at the Committee table.

2. Mrs. PAVLIKOVSKA (Ukraine) said that her delegation had found it difficult to reply to the Committee's questions in the time available. In preparing its answers, it had attempted to divide the questions into logical groups.

3. With regard to the question of detention, articles 106 and 115 of the Code of Criminal Procedure authorized the authorities to detain suspects only if they had been caught in the act of committing a crime or immediately thereafter, if they had been directly accused by the victim, if their clothes, home or other property had borne clear evidence of their guilt, if they had attempted to escape, if they had no permanent residence or if their identity could not be established.

4. The investigative authorities were required to compile a report containing the grounds for the arrest, the date and time of arrest, the place of detention and the date and time when the report had been prepared. Detainees must be informed that they had a right to make a written communication to the Prosecutor's Office within 24 hours of their arrest. That Office must, in turn, furnish detainees with the materials which had provided the justification for their arrest. The detention report must be signed by the person who had compiled it and by the detainee. The Prosecutor's Office must either provide justification for the continued detention of arrested persons or release them within 48 hours of the completion of the detention report. The total period of detention could not exceed 72 hours. She also noted that a form by which detainees were notified of their rights was already in use.

5. Under Ukrainian law, the families of detainees must be notified of their arrest and the detainees themselves must be informed of their rights and of the regulations governing their detention. Under article 43, paragraph 1, of the Code of Criminal Procedure, suspects had a right to be informed of the crime of which they had been accused, to refuse to answer, to have a lawyer and to meet with counsel prior to questioning, to submit evidence on their own behalf, to request evidence of the lawfulness of their arrest and to file a complaint against the person carrying out the investigative procedures or against the Prosecutor's Office. In the last of those cases, the investigation of the complaint would be handled by the court rather than by the Prosecutor's Office.

6. Once a suspect had been placed in detention, he must be questioned immediately or, if that was not possible, within 24 hours. The suspect's defence counsel must be present during questioning except in cases covered by part I of article 46 of the Penal Code, which stipulated that detainees could

waive the right to defence counsel. However, that right could not be waived if the detainee was under the age of 18, physically or mentally disabled or not fluent in the language of the proceedings; in cases where there might be reason to impose medical treatment; or, since the death penalty was unfortunately still on the books, although it had not been implemented since 1977, where a death sentence might result from conviction.

7. In accordance with current legislation, preventive custody could not exceed 72 hours without charges being brought. The maximum period for pre-trial detention was two months; if the investigation could not be completed within that time, the detention could be extended by the Prosecutor to up to three months. In especially complicated cases, in the Autonomous Republic of Crimea, Kiev and the military districts, custody could be extended to up to six months. There were also time limits of one and a half years on court-imposed custody during investigation. If the investigation was not completed within that period, the individual had to be released.

8. No instructions had been drawn up on the right of investigators to allow defence counsel to be present during the interrogation of the detainee or suspect. The law provided that defence counsel must be ensured from the first moment of detention or custody.

9. While it was true that there was no complete definition of the term "torture", authorities could be held responsible for acts that came under the definition contained in article 1 of the Convention. For example, regardless of the physical or psychological methods used and of who was committing the acts, any guilty official was considered responsible under article 166 of the Penal Code. If the act of the authorities went beyond the scope of their legal rights and powers and was harmful to the interests of States or legal or physical persons, the guilty party was to be deprived of his freedom for two to five years, to perform corrective labour for two years and to be deprived of the right to hold office or engage in other official activities for three years, with those penalties increasing in proportion to the seriousness of the act.

10. The legality of actions of representatives of investigative bodies was monitored by the Prosecutor's Office, while that of actions of people working in the Prosecutor's Office was monitored by the courts. If it was determined that inadmissible methods of investigation had been used, the guilty party was deprived of his freedom in accordance with article 7 of the Code of Criminal Procedure. Where there was information that a crime had been committed by the prosecution, investigative authorities or judge, the court must decide within three days whether or not to institute criminal proceedings. Refusal to institute such proceedings could be contested in court. The limitation on, and obligations of, the prosecution and the methods for supervising its compliance with the rules of places of detention, were specified by law.

11. In order to ensure proper prosecutorial monitoring, the Prosecutor's Office could investigate corrective labour camps and institutions for minors on an interregional basis; there were 17 such bodies in the Ukraine. The Prosecutor was obliged to carry out a comprehensive inspection of compliance with the law and human rights in places of detention on a monthly basis and, in corrective labour camps, at least once every six months. During the

inspection, special attention was paid to the legality of and grounds for the detention, compliance with the laws on the detention regime, the day-to-day running of medical services and the use of labour. Particular attention was also given to early release measures and questions of compensation. Every month, the Prosecutor's Office conducted personal interviews with detainees and convicts and verified the legality of decisions made with regard to them. The grounds for transferring people to special places of confinement or corrective camps, and the legality of decrees, administrative orders and investigative activities, must be checked in order to prevent crime in such institutions. If the Prosecutor's Office discovered any violations during the inspections, it tried to react as quickly as possible. Furthermore, the legality of activities of the administration during detention was monitored by higher departmental authorities of the Ministry of Internal Affairs, while the legality of measures of physical restraint and the use of fire-arms was verified by the Prosecutor's Office. Reports of violations were submitted to the regional authorities, the Office of the Prosecutor-General and the Supreme Council.

12. When complaints were filed by detainees or convicts, there was a 10 to 15 day investigative procedure. If more time was required, notification must be made within one month. That period could be extended only by special permission of the Prosecutor-General.

13. As to whether physical traces of the use of force or torture constituted grounds for punishment, any complaints by a suspect or accused person must be looked into in accordance with articles 73 and 74 of the Code of Criminal Procedure. A confession was a basis for charges being filed only if confirmed by available evidence, such as eye-witness or victims' accounts, expert testimony and investigative reports.

14. As of 1 April 1997, there were 169 penal institutions in the Ukraine, with 220,000 detainees, including 126 corrective labour institutions and 11 places of detention for minors. In reply to the question whether conditions in detention centres had improved since the second periodic report, she said there had been some positive changes. Legislation adopted in June 1993 on pre-trial detention for suspects and persons being held in custody required that they should be fed three times a day, have their own bed, get eight hours of sleep and daily exercise, wear their own clothes and have access to television, board games, newspapers and magazines.

15. The legislation was also intended to ensure broader protection of the overall civil rights of detainees. The daily amounts of money allotted to prisoners to meet their basic needs had also been increased; they could call their relatives; the social worker staff had recently been expanded and psychologists hired; and access was allowed by social and religious organizations, as well as by relatives. Special rooms had been prepared for clergymen and prisoners were given access to religious literature and objects of worship. Additional changes in the conditions of detention had come into force with the legislation of 27 July 1994, according to which the sentences imposed on pregnant women and mothers with children under age three, except for those who had been deprived of their liberty for more than five years for serious crimes, could be postponed either until the woman could be released from work because of her pregnancy, until the birth of the child or until

the child had reached an adequate age. The postponement also applied to pregnant women and those who gave birth while serving their sentence.

16. There were several regimes for detention for those serving sentences in Ukraine; penal settlements for those who had committed crimes of neglect, negligence or non-deliberate crimes, as well as for transferees from other settlements; general-regime penitentiaries, for those sentenced for the first time or for non-violent crimes and for women, except those recognized as being especially dangerous repeat offenders; and a stronger regime for the first-time offenders sentenced to up to 15 years. There were also a halved regime, an extraordinary regime for particularly dangerous special offenders, and a regime for serious crimes.

17. Entitlements varied according to the degree of severity of the regime. General-regime prisoners, for example, could spend all the money they received for their labour and, after serving half of their sentence, could have their wages increased by up to 55 per cent. Prisoners under the strictest regime, by contrast, were entitled to spend only up to 50 per cent of their earnings and to a 20 per cent wage increase after serving half their sentence. Similarly, the number of four-hour visits allowed ranged from one every month to one every six months. There were also varying restrictions on the number of packages prisoners could receive and on the terms of their right to parole or transfer to open prisons. In none of the regimes were there any restrictions on correspondence. The right to make telephone calls, the abolition of limits on correspondence and the right to long visits and special leave had all been established recently.

18. With regard to punishment in prisons, article 15 of the Code of Criminal Procedure stipulated that people being held in preliminary detention during the investigation could be warned, reprimanded, made to clean the premises and deprived for one month of the right to buy food and to receive or send packages or correspondence. Pregnant women and women with children, as well as minors, could not be deprived of the right to buy food products or to receive mail or packages. Detainees who violated the rules of the place of detention could be placed in solitary confinement for up to 10 days; 3 days, in the case of minors. However, pregnant women or women with children could not be put into solitary confinement. Measures that deliberately caused physical or mental suffering or denied the dignity of those in custody were prohibited. Under article 66 of the Code, detainees who violated the penitentiary regime could be warned, reprimanded, required to clean the sanitary facilities on the premises and also deprived of the right to see movies or concerts, take part in sports, receive packages and mail and, once a month, to receive food products. They could be put into isolation in either a room or a cell for up to 15 days.

19. According to article 8 of the Pre-Trial Detention Act, persons remanded in custody were kept in communal cells. They could be placed in solitary confinement if there was a danger that they might be attacked by other detainees or that they might commit another crime while in detention or spread infection or disease. Minors, however, could not be kept in solitary confinement.

20. Article 7 of that Act stipulated that all detainees had to be given a medical examination to ascertain whether they needed emergency or other treatment or whether they constituted a danger to the health of other prisoners and staff. Medical services for the prison system, preventive care and epidemiological treatment were provided for in article 11 of the Act and other health legislation in force. Specialized medical establishments operating in the prison system provided in-patient care and, in individual cases, emergency specialized treatment could be provided in institutions run by the Ministry of Health, outside the prison system. There were 19 specialized hospitals, of which 9 were responsible for general health care, 8 dealt with patients with tuberculosis, 1 catered for the treatment of psychological disorders and 1 treated dermatological complaints and venereal diseases. Prisoners had the right to be treated by the medical service attached to the prison where they were being held or to seek medical attention outside at a private establishment. A special department of the Ministry of Internal Affairs was responsible for protecting the health of persons serving custodial sentences. Experiments and scientific research on prisoners receiving medical treatment were categorically prohibited.

21. Special and further training courses were provided for all staff working in places of detention by the Ministry of Internal Affairs in institutes in Kiev, Lvov, Chernigov and Dneprodzershinsk. The medical staff of the prison system had to meet the requirements which were established by law for people working for organs of the Ministry of Internal Affairs and which included compliance with professional and ethical standards. One-year courses on the protection of human rights were also available. In 1997, in cooperation with the Council of Europe, work experience would be provided for Ukrainian health workers in medical institutions in prisons in European countries and thematic conferences would be held on relevant topics with the participation of European experts. The European Prison Regulations (1987) were being translated into Ukrainian and would be distributed to staff of the prison system.

22. Ukraine was also in the process of translating and publishing the Athens version of the Hippocratic Oath for doctors and health workers in the prison system. A medical department in each region monitored and managed medical staff working in prisons.

23. Pursuant to Decree No. 336 of the Ukrainian Cabinet dated 16 June 1992, the quality of food provided to pregnant women, nursing mothers and sick prisoners had been improved. A reduction in food rations could not be used as a form of punishment.

24. In November 1996, Ukraine had amended its Code of Criminal Procedure and introduced fines to replace custodial sentences for certain minor offences.

25. Since Ukraine's second periodic report (CAT/C/17/Add.4), cell space for an additional 8,300 people had been provided and 60 remand centres had been built to house 4,800 individuals. Efforts had been made to solve the problems of overcrowding, inter alia, by creating more than 10,500 extra places to house criminals and by repairing existing structures.

26. Despite efforts to improve conditions in prisons and remand centres, it was regrettable that 150 cases of suicide during detention had been recorded in 1995 and 1996. The investigation by the authorities had found that the main reasons for suicide included the length of custodial sentences. No cases of deliberate incitement to suicide had been found.

27. The Prosecutor's Office and the courts were responsible for monitoring compliance with the rights and interests of all persons in detention. Regular inspections of penal establishments were carried out. In 1996, more than 5,400 inspections had been conducted and over 7,000 cases of violations of prisoners' rights had been discovered. That had led to disciplinary action against approximately 2,000 officials, of whom 22 had been charged with criminal offences.

28. On 22 April 1993, a new article 53-1 had been added to the Code of Criminal Procedure which made it incumbent on examining bodies, investigators, public prosecutors and judges to make redress for injuries caused to citizens by any illegal actions they may have taken. Redress was made in full, property that had been confiscated was returned or its value reimbursed and any fines or other costs, including for in-patient treatment, were refunded. Compensation was also provided for moral damage, which was characterized as any disruption caused to the victim's normal social relations and any suffering caused as a result of physical or psychological coercion or pressure which had negative consequences of a moral nature.

29. Official statistics in Ukraine and from the Council of Europe estimated that there had been 169 instances in which the death penalty had been applied in 1996. That figure did not reflect well on Ukraine and measures were under way to abolish capital punishment.

30. International instruments to which Ukraine was a party were widely publicized across the country. A compilation of such instruments, some of which had been in force since 1946, was published in Ukrainian. Since the ratification of the Convention, copies of the text had been distributed to departments of the Supreme Council. Since the end of 1996, the Ministry of Justice had been issuing an Official Journal in Ukrainian every week. It included a section on international instruments and provided a list of legal provisions in both Russian and English.

31. The Constitution of Ukraine stated that international treaties that had been ratified by Ukraine were an inseparable part of national legislation and any provisions that were at variance with national laws took precedence. As a party to the Vienna Convention on the Law of Treaties, Ukraine ensured that new national legislation fully conformed with the provisions of international treaties and agreements that had duly entered into force. Any amendments to international instruments were incorporated into national legislation.

32. Although Ukraine had provided for a five-year transition period, much had been achieved in a shorter time in terms of legal reform and the practical implementation of the Convention. Ukraine was also actively working on the documents required for the ratification of the European Convention on Human Rights.

33. The bodies responsible for implementing the Convention in Ukraine were the Ministry of Justice, the Prosecutor's Office, the Ministry of Internal Affairs and the Security Service, with the Ministry of Justice acting as coordinator.

34. Under the new Constitution, the maximum period of detention without charge was 72 hours. After the preferment of charges, maximum periods for pre-trial detention were prescribed in the Penal Code, the Code of Criminal procedure and other special legislation.

35. Under the existing legislation, two people's assessors, who did not always have a legal background, but who were always independent, must be present at civil and criminal proceedings. Judges were in all cases independent professionals. Under new legislation that would shortly enter into force, the number of people's assessors would be increased.

36. Persons convicted of serious crimes were held in strict-regime penitentiaries and could not be released for good behaviour until they had served at least 50 per cent of their sentence.

37. Thanking Amnesty International for its comments in the Ukrainian language which her delegation had received the previous day, she pointed out that more effective cooperation would have been possible if the comments had been made available when the report was being prepared. Amnesty International had contacts with the Ministry of Internal Affairs, but none as yet with the Ministry of Justice, which was keen to establish some form of cooperation. She noted, however, that some of the information contained in the comments was inaccurate, in particular the allegation that the Ministry of Internal Affairs allowed special-purpose detachments to be trained on the premises of correctional labour colonies and to perfect their skills on prisoners.

38. Ukraine had never formulated a reservation to article 22 of the Convention. As it had withdrawn its reservation to article 30 of the Convention in April 1989, the only remaining reservation concerned article 20 and was currently being reviewed.

39. Article 4 of the Penal Code stated that all persons who had committed a crime in the territory of Ukraine were answerable for their actions under the Code. Exceptions were made for diplomatic personnel and other persons exempted under international legislation. Article 5 related to the criminal responsibility of Ukrainian citizens and stateless persons before domestic courts for criminal acts committed outside Ukrainian territory. If such persons had already been punished abroad, the Ukrainian courts could commute or waive their sentence. Provision was made in all cases for cooperation with the legal authorities of the country where the crime had been committed.

40. A number of intergovernmental agreements had been signed on legal assistance in criminal and civil cases involving the extradition of the offender. In 1995, Ukraine had acceded to the European Convention on Extradition. Two bilateral agreements on the transfer of sentenced persons had recently been concluded with Georgia and Azerbaijan. Every effort was

made to ensure that such agreements were drafted in the light of relevant European treaties, both those already acceded to and those under consideration.

41. A Constitutional Court had begun to operate at the end of 1996. It examined the constitutionality of legislation and could hear complaints from individuals. Issues relating to the implementation of the Convention were considered by the ordinary courts and would also be dealt with by the Commissioner on Human Rights as soon as the bill instituting that office had been adopted by the Supreme Council.

42. She was sure that the Ukrainian Government would consider the possibility of making a contribution to the Voluntary Fund for Victims of Torture despite its persistent economic difficulties.

43. On joining the Council of Europe, Ukraine had undertaken to have its legislation translated for review and analysis. As soon as the translations were available, copies would be supplied to the Committee.

44. Mr. YAKOVLEV inquired about the overall duration of preliminary detention, in other words, the period beyond which extension was impossible.

45. To obtain access to a person in custody, defence counsel was required to produce confirmation in writing of his or her authority to act in that capacity. Who was responsible for issuing the document and was a detained person allowed to use the services of a representative who had no such certificate?

46. Mr. PIKIS asked whether a separate code of discipline was applied in the armed forces. What were the prevailing conditions of detention and had there been any complaints of cruel or degrading treatment of conscripts by their military supervisors?

47. Reference had been made to some 7,000 incidents that had occurred in prisons. What was the nature of those incidents and what kinds of acts were perceived as constituting cruel, inhuman or degrading treatment and torture in that context? Was rape, for example, viewed as an act of torture?

48. He asked for further information on correctional institutions. Did correctional sentences involve a different form of punishment or separate treatment?

49. With regard to the 15-day isolation regime, were no contacts allowed and what were the dimensions of the prisoner's cell?

50. Mrs. PAVLIKOVSKA (Ukraine) said that the maximum period of preliminary detention was one and a half years. Thereafter, a person must be released regardless of the circumstances and the seriousness of the alleged offence.

51. The Ministry of Justice exercised limited control over the activities of lawyers. More stringent supervision was conducted by the Bar Association. Certificates were issued either by that Association or, in the case of non-members, by the Ministry of Justice. A large number of law firms operated

in Ukraine. Foreign lawyers could defend the interests of nationals of their countries unless they were under investigation in criminal proceedings.

52. The Military Prosecutor's Office and the Military Tribunal operated in accordance with the provisions of general legislation governing investigation, detention and legal proceedings. The requirements and conditions were exactly the same.

53. Rape was viewed as a form of torture and was covered by two or more articles of Ukrainian legislation.

54. Two thousand individuals in official positions had been brought to book for the 7,000 incidents detected in prisons in 1996. Of those, 22 persons had been convicted under article 166 of the Penal Code of offences covered by the Convention. The corresponding figure for 1995 was 133 convictions.

55. With regard to the isolation regime, the normal dimensions of a cell were 2 m^2 of living space for a man and 3 m^2 for a woman.

56. The CHAIRMAN thanked the delegation of Ukraine for its detailed replies. The Committee's conclusions and recommendations would be issued later in the session.

The meeting rose at 6.05 p.m.